

Update: Criminal Procedure Monograph 5—Preliminary Examinations (Revised Edition)

Part A—Commentary

5.6 Defendant's Right to a Preliminary Examination

B. Right to Preliminary Examination on New Charges Added Following Arraignment in Circuit Court

Add the following case summary to subsection B on page 9:

In the absence of unfair surprise or prejudice, a defendant has no right to a preliminary examination on a new charge added on the prosecutor's motion to an information filed after the defendant waived preliminary examination on the original offense. MCR 6.112(H); *People v McGee*, ___ Mich App ___, ___ (2003).

An accused has a statutory right to a preliminary examination when the prosecution is initiated by filing an information, and a prosecutor is authorized to file an information once the magistrate binds a defendant over to circuit court following a preliminary examination or once the defendant has waived preliminary examination on the offense. *McGee, supra* at ___; MCL 766.1; MCL 767.42(1). Once the information is filed, the circuit court has jurisdiction over the defendant and the case, and the court may amend the information at any time “unless the proposed amendment would unfairly surprise or prejudice the defendant.” MCR 6.112(H); *McGee, supra* at ___.

In *McGee*, the Michigan Court of Appeals concluded that the prosecution's motion to amend the information on the first day of the defendant's trial supported the defendant's claim of surprise, but the defendant failed to show that she suffered any actual prejudice as a result. *McGee, supra* at ___. In the absence of any *unfair* surprise or prejudice, the trial court did not abuse its discretion in permitting the amendment of the information to add the charge for which the defendant was ultimately convicted. *Id.* at ___.

5.17 Waivers of Preliminary Examinations

E. Amending the Information to Add New Offense After Waiver of Preliminary Examination

Add a new subsection E on page 26, and insert the following case summary:

When a defendant waives the right to a preliminary examination and the magistrate files the return, the prosecutor has authority to file an information against the defendant. Once the information is filed, the circuit court has jurisdiction over the defendant and the case, and the court may amend the information at any time “unless the proposed amendment would unfairly surprise or prejudice the defendant.” MCR 6.112(H); *People v McGee*, ___ Mich App ___, ___ (2003).

The Michigan Court of Appeals concluded that the prosecution’s motion to amend the information on the first day of the defendant’s trial supported the defendant’s claim of surprise, but the defendant failed to show that she suffered any actual prejudice as a result. *Id.* at _____. In the absence of any *unfair* surprise or prejudice, the trial court did not abuse its discretion in permitting the amendment of the information to add the charge for which the defendant was ultimately convicted. *Id.* at _____.